

U.S. Department of Justice



United States Attorney Southern District of New York

The Silvio J. Mollo Building One Saint Andrew's Plaza New York, New York 10007

September 10, 2019

BY ECF

The Honorable Sidney H. Stein United States District Judge Southern District of New York 500 Pearl Street New York, New York 10007

Re: United States v. Uzair Paracha, 03 Cr. 1197 (SHS)

Dear Judge Stein:

The Government respectfully writes in response to the Court's August 29, 2019 order requiring the Government to submit a status report on or about the first, tenth, and twentieth of each month, describing: "(1) what has happened in terms of production since the last status report; (2) how many people are working on reviewing documents; (3) how many documents have been turned over to the defense to date; (4) how many documents have been turned over to the defense since the last report; (5) and what the government's projection is as to future production dates and materials." Dkt. 159.

As the Court is aware, in order to meet its disclosure obligations under *Brady v*. *Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150, 154 (1972), and their progeny, as well as 18 U.S.C. § 3500, the Government must undertake a review of an extraordinarily large quantity of classified documents (the "Classified Documents") that do not belong to the Department of Justice and that may be reviewed only at an out-of-state location. Prior to the last conference in this case, one Government attorney had participated in review of the Classified Documents at that location for approximately ten days' total. Since the Court's last order, six Government attorneys have participated in approximately six, three, one, one, one, and one days' worth of review of the Classified documents. The Government expects that a rotating team of approximately eight attorneys, including five from this Office and three from the Department of Justice's National Security Division, will participate in the review in the weeks to come. In total, approximately 445 of the Classified Documents have been reviewed. Although the Government has not received a final tally of the full universe of Classified Documents, the Government currently estimates a total of approximately 14,000² documents.

¹ Due to the nature of the documents, as new attorneys participate in the review, they are required to undergo certain additional clearances, accounting for some of the delay in starting the process.

² That number is lower than the estimate previously provided to the Court, as a result of a deduplication process recently run on the documents.

To date, none of the Classified Documents have been turned over to the defense. The Classified Documents implicate important national security equities and belong to other agencies. While the Government will make every effort to produce what it can and minimize classified motions practice, as the Government informed the Court previously, it is likely that many of the materials at issue will require the Court's consideration of an *ex parte* motion filed pursuant to the Classified Information Procedures Act, 18 U.S.C. app. 3.

There is not yet a subset of the Classified Documents that the Government is in a position to produce to the defense, even on a rolling basis. The Government has, however, sought permission at a supervisory level to produce a subset of the Classified Documents in classified discovery, and is awaiting a response from the relevant agency. Should permission be granted, those documents will be disclosed promptly. As part of its ongoing review, the Government will continue to try to identify materials that are similarly amenable to production in advance of any CIPA filing. If it would assist the Court, the Government can provide further detail about the Classified Documents and its approach to their review and production in a classified setting pursuant to Section 2 of CIPA.

Finally, the Government notes that on March 11, 2019 and June 3, 2019, the Government produced discovery of the unclassified materials in its own possession, along with nearly all of the Government exhibits offered at the defendant's 2005 trial, all of which amounted to approximately 177 documents in total.

Respectfully submitted,

GEOFFREY S. BERMAN United States Attorney

By: <u>s/</u>

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